IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 34232 of 2007(A)

OS.595/2004 of PRL.M.C.,IRINJALAKUDA
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PETITIONER:

BEENA, AGED 39, W/O.KIZHUPPILLI
ANANDAN, MARIYADU VILLAGE, MARIYADU DESOM,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN

RESPONDENT:

KRISHNAN, AGED 72, S/O.AMBADATHU MANI,
KALLETTUMKARA VILLAGE AND DESOM,
MUKUNDAPURAM TALUK, REPRESENTED BY HIS POWER
OF ATTORNEY HOLDER SRI.SUBRAHMANYAN,
S/O.KIZHUPPILLI KUTTAN, MURIYADU VILLAGE AND
DESOM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34232 of 2007

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Dated this the 20th day of November, 2007.

JUDGMENT

This Writ Petition is filed (1) to set aside Ext.P9 order passed by the Principal Munsiff, Irinjalakuda in O.S.No.595 of 2004, (2) to issue an order staying the operation of Ext.P9 order till the disposal of Ext.P10 appeal, (2) to issue an order of temporary injunction restraining the respondent from committing any acts of excavation of digging or changing the present nature of plaint B/counter claim B schedule property during the pendency of Ext.P10 appeal and (4) to issue an order directing the Subordinate Judge's Court, Irinjalakuda to pass orders as prayed for in Exts.P11 and P12. So far as the first prayer is concerned, it is an order passed under Order 39 Rule 1 of C .P.C., which is an appealable order and for which an appeal is already filed and therefore setting aside Ext.P9 under Article 227 jurisdiction does not arise. So far as prayers 2 and 3 are concerned, the trial court has already passed an order finding

that there is a prima facie case and therefore the question of staying the order by this Court at this stage does not arise and so also this Court cannot issue a temporary injunction when the matter is already pending before the Appellate Court. Therefore those two prayers also are disallowed.

2. Now the only prayer that remains is the fourth prayer. Some urgency is sought for by the learned counsel for the writ petitioner. When an injunction application is disposed of and it is submitted that on the strength of the interim injunction attempts are made to destroy the property, the court is duty bound to pass appropriate interim order in such type of matter.

3. Therefore, I direct the Subordinate Court, Irinjalakuda to dispose of Exts.P11 and P12 in C.M.A.No.36 of 2007. If the court feels that instead of disposing of the injunction application, C.M.A. itself can be disposed of, the court is at liberty to do the same.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 20/11